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UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS SCOLA, ET AL,

Defendants.

Criminal Action
No. 04-10135-GAO

TRANSCRIPT OF STATEMENT OF REASONS

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

United States District Court
John J. Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
November 15, 2006
2:35 p.m.

* * * * *

SHELLY M. KILLIAN, RPR, CM, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 3510
Boston, MA 02210
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APPEARANCES:

For the Plaintiff:

David G. Tobin
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Boston, Massachusetts 02210

For Defendant Thomas Scol a:

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P R O C E E D I N G S

(The following proceedings were held in open
court before the Honorable George A. O'Toole, Jr.,
United States District Judge, United States District
Court, District of Massachusetts, at the John J. Moakley
United States Courthouse, 1 Courthouse Way, Boston,
Massachusetts, on November 15, 2006.

Defendant Thomas Scol a is present with
counsel. Assistant U.S. Attorney David Tobin is

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present.)

THE COURT: We have determined that the guidelines regard Mr. Scola as a career offender and accordingly propose a range of 151 to 188 months on the basis of that. A career offender, as I said, meaning that he has literally met the preconditions to that status for the guidelines as they're set forth, which are the two prior convictions. He has a record that includes more than two prior convictions. But for the career offender -- special career offender provision, that complete record would result in something -- a different assessment.

There's no doubt that the criminal career, criminal history, is an important factor here. It's a factor recognized in the guidelines. 3553(a), the first factor includes the history and characteristics of the

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defendant. The history is persistent criminal behavior. The characteristics include the entire social history, which includes the family picture as presented and the drug abuse, as well as the criminal episodes.

This offense of conviction, or these offenses of conviction, are serious offenses as the government has pointed out and merits serious punishment. There is, I think, room for considerable debate about the deterrence effect of sentences, and particularly of any -- a sentence of any particular length, both as a matter of general deterrence -- perhaps as a matter of specific deterrence, although I think that it's probably in this -- well, in some circumstances probably a greater specific deterrence effect from a large sentence

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15 than there may be a general deterrence effect from that.

16 Weighing all the considerations, I think that
17 the guidelines recommendation is a sentence that is too
18 high for these circumstances. Because although it would
19 not be appropriate under the guidelines to take account
20 of the drug abuse, the persistent, virtually lifelong
21 drug abuse, I do think it is appropriate in assessing
22 the statutory factors, particularly in light, as the
23 defense argues, of the requirement, and I read it as a
24 requirement, that the sentence be sufficient but not
25 greater than necessary to achieve the objectives of the

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1 statute. So I think under these circumstances a
2 sentence of 120 months is an appropriate sentence.

3 I would say that I gave some consideration to
4 the possibility that it would not be a minimum that
5 would control, and I gave some thought to whether the
6 sentence ought to be similar to the sentence imposed on
7 Mr. Nivar because the behavior was almost matched,
8 parallel behavior. The significant difference, though,
9 is I think that Mr. Nivar does not have the criminal
10 history this defendant has and, therefore, this
11 defendant merits a higher sentence than Mr. Nivar would
12 on that reason.

13 So I -- for what it's worth, if it ever
14 becomes relevant, were I free to go below 120 months, I
15 would not. I think that represents, I did a quick
16 calculation, slightly less than a 40 percent increase
17 over Mr. Nivar's; and I think that's appropriate to
18 recognize the difference in criminal history.

19 So, Mr. Scola, Thomas Scola, on your

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conviction of these offenses and pursuant to the
Sentencing Reform Act of 1984, it is the judgment of the
Court that you be and you hereby are committed to the
custody of the Bureau of Prisons to be imprisoned for a
term of 120 months. This consists of equal terms of 120
months on all of the counts -- of each of the counts of

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conviction, all to be run concurrently. I will make a
recommendation in the judgment that you be considered
for participation in the 500-hour comprehensive drug
treatment program. Upon your release from imprisonment,
you shall be placed on supervised release for a term of
eight years.

PROBATION OFFICER: Six.

THE COURT: Six years, adjusted for the
new... The term consists of six years on each of the
counts of conviction, all to run concurrently. Within
72 hours of your release from the custody of the Bureau
of Prisons, you shall report in person to the district
to which you've been released. While you're on
supervised release, you shall not commit any other
federal, state, or local crime. You shall refrain from
the unlawful use or possession of any controlled
substance. You shall submit to a drug test within 15
days of your release from imprisonment and at least two
periodic drug tests thereafter, not to exceed a total of
104 in any given calendar year, all as may be directed
by your probation officer. You shall submit to the
collection of a DNA sample as directed by the probation
office.

While you're on supervised release, you shall

25 observe all the standard conditions that pertain to the

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1 status as they are set forth in the sentencing
2 guidelines at Section 5D1.3(c). Those conditions are
3 incorporated by reference and will be set forth in the
4 judgment.

5 You are prohibited from possessing a firearm,
6 destructive device, or other dangerous weapon. You are
7 to participate in a program for substance abuse
8 treatment or counseling as may be directed by the
9 probation office, which may also include drug testing,
10 random drug testing, again not to exceed 104 tests in
11 any given year. You may be required to contribute to
12 the cost of such program based on your ability to pay or
13 the availability of third-party payment. You also may
14 be required to participate in any mental health program
15 or treatment as directed by the probation office and,
16 again, may be required to contribute to the cost of such
17 program based on your ability to pay or the availability
18 of third-party payment.

19 I will not impose a monetary fine in view of
20 the financial circumstances of the defendant, but there
21 is a mandatory assessment of \$100 on each of the 14
22 counts of conviction, which totals \$1,400, which shall
23 be due forthwith.

24 MS. BASSIL: I'd ask you to lift that amount
25 forthwith, your Honor, since he'll be incarcerated ten

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1 years.

2 THE COURT: What's the custom in --

3 PROBATION OFFICER: BOP, I believe, will try
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4 to take it out once he gets in there.

5 THE COURT: At what rate? Do you know?

6 PROBATION OFFICER: I'm not sure what rate.

7 THE COURT: Do they deplete his account
8 entirely or do they take --

9 PROBATION OFFICER: No, no.

10 THE COURT: -- some portion?

11 PROBATION OFFICER: They'll take it out in
12 stages.

13 THE COURT: They can do that then.

14 * * * * *